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10/735,932	12/15/2003	George Wells	PB400003	3717

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460 Grant Street  
Atlanta, GA 30312

EXAMINER

SKURDAL, COREY NELSON

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/735,932

**Applicant(s)**

WELLS, GEORGE

**Examiner**

Corey N. Skurdal

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/15/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13 and 17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/783142 in view of Rivera et al. (US 6,889,879).

Regarding claim 1, Application No. 10/783142 discloses a holster including: a planar member; a holding member; retaining member with a means for creating friction coupled thereto, wherein the planar member is preloaded against the retaining member. Application No. 10/783142 does not disclose that the retaining member extends from the holding member towards the planar member. However, Rivera et al. teaches the use of a carrier on a belt with retaining members 80 or 104 which can extend either from

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the holding member toward the planar member or from the planar member toward the holding member. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Application No. 10/783142 with a retaining member extending from the holding member toward the planar member in order to enable an alternate way of mounting the clip to a belt.

Regarding claim 2, the modified Application No. 10/783142, claim 4, discloses a planar member with a curve capable of accommodating a users torso.

Claim 3 is identical to claim 5 of Application No. 10/783142 but recites "at least two fasteners" in place of "at least one fastener."

Claim 4 is identical to claim 6 of Application No. 10/783142.

Claim 5 is identical to claim 7 of Application No. 10/783142.

Claim 6 is identical to claim 8 of Application No. 10/783142.

Claim 7 is identical to claim 9 of Application No. 10/783142.

Claim 8 is identical to claim 10 of Application No. 10/783142.

Claim 9 is identical to claim 11 of Application No. 10/783142 but recites "the at least two fasteners" in place of "the at least one fastener."

Claim 10 is identical to claim 12 of Application No. 10/783142.

Regarding claim 11, the modified Application No. 10/783142, claims 13 and 14, discloses a means for creating friction coupled to the retaining member being comprised of a rubber grommet.

Claim 12 is identical to claim 15 of Application No. 10/783142 but recites "the at least two fasteners" in place of "the at least one fastener."

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Regarding claim 13, the modified Application No. 10/783142 discloses a planar member capable of being actuated as a cantilever beam, such that the retaining member can be separated from the planar member.

Regarding claim 16, the modified Application No. 10/783142 discloses the claimed invention including: a firearm; a holster comprising a planar member, a holding member, and a retaining member, the three forming a closed loop; a means for creating friction being coupled to the retaining member; and the planar member being preloaded to exert force on the retaining member.

This is a provisional obviousness-type double patenting rejection.

3. Claims 14, 15, 17 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/783142 in view of Rivera et al. and in further view of Coyne (US 6,691,374). The modified Application No. 10/783142 substantially discloses the claims, but does not include a latch member extending from the holding member towards the planar member. However, Coyne discloses a belt clip which uses retaining members 46b and 46c as well as latch member 46a extending from the holding member at 40 and toward the planar member 60. Furthermore, the latch member of Coyne appears to extend past the retaining member 46c by a small amount, at least 1/64<sup>th</sup> of an inch. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Application No. 10/783142 with a latch member in order to further secure a belt in the clip.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, and 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Shetler et al. (US 6,752,299).

Regarding claim 1, Shetler discloses (Figure AA below) a holster as claimed including: a planar member A; a holding member B coupled to the planar member by hinge E and pin F; a retaining member C extending from the holding member toward the planar member such that a closed loop is formed (See Figure 1); raised projections D as a means for creating friction; and hinge/spring E on the planar member for creating a preloaded force against the retaining member.

Regarding claim 2, Shetler discloses a retaining member C which is curved at each edge so as to create an accommodating surface while being positioned against a user's torso.

Regarding claim 12, Shetler (referring to Figure BB below) discloses retaining member C (the lower shaded half) which is oriented generally parallel to the holding member B, so as to make the retaining member project from the holding member at a 90° angle.

Regarding claim 13, Shetler discloses planar member A (Figures AA and BB shown below) formed as a cantilever arm, such that the planar member may be separated from the retaining member C by actuating the cantilever arm by hinge E.

Figure AA

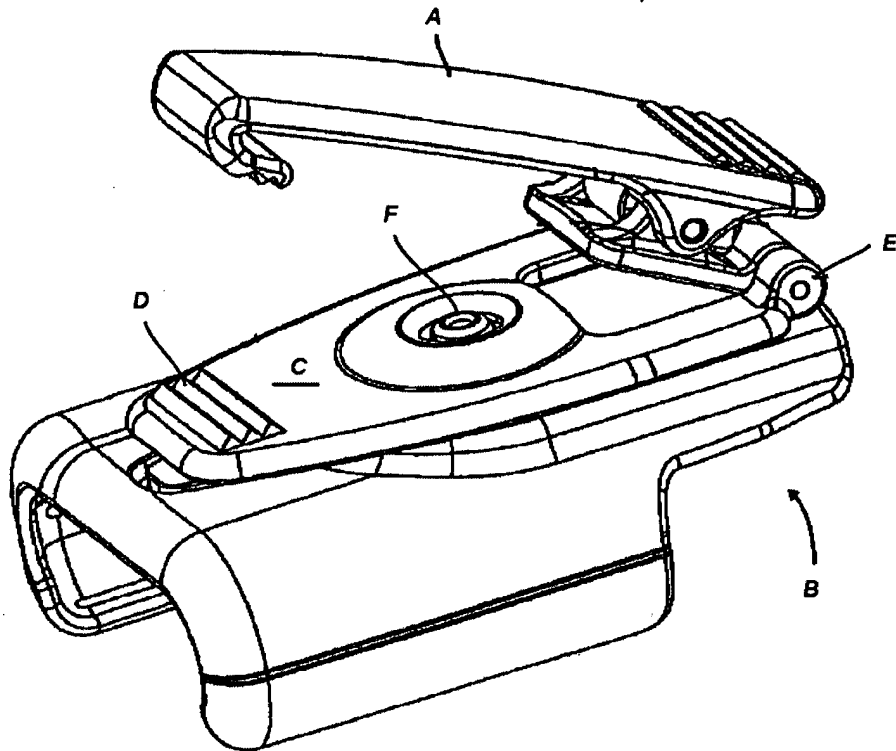
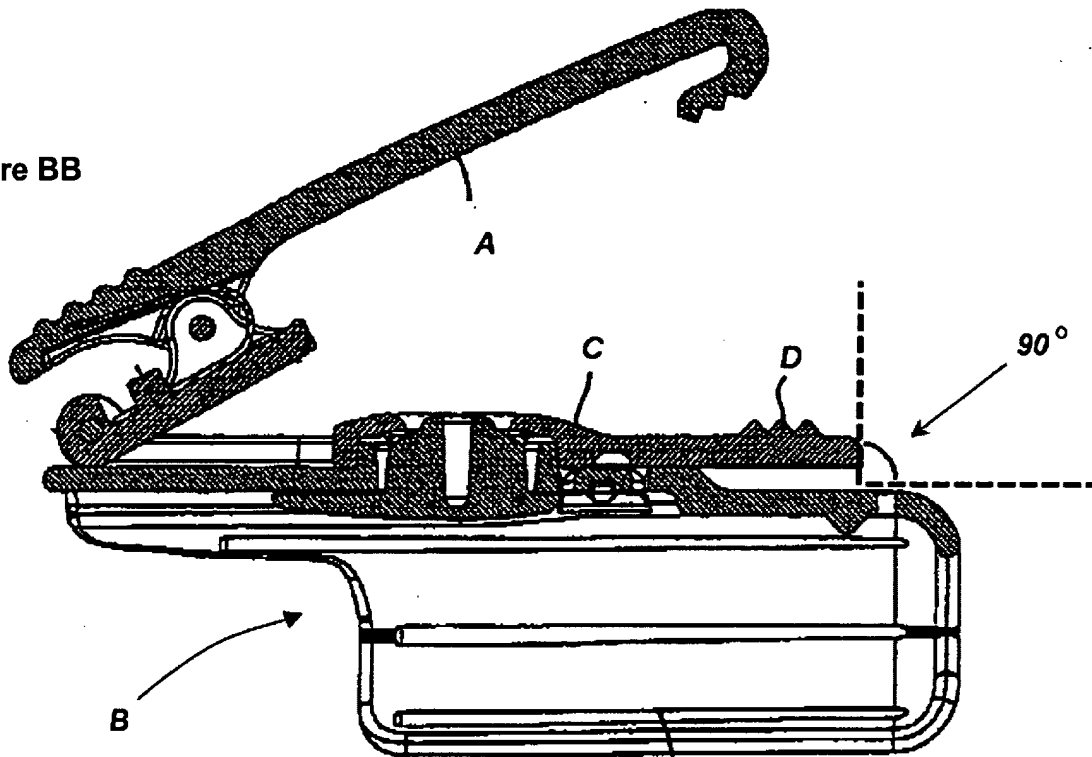


Figure BB



***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shetler in view of Nichols (US 4,504,001).

Regarding claim 3, Shetler disclose the device substantially as claimed and as applied to claim 1 above, but does not disclose the use of at least one fastener selected from the group listed in the claim. However, Nichols discloses a holster for a firearm with belt loop 22 attached to the holding member 11 by screw 26. Therefore it would



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have been obvious to one skilled in the art at the time of invention to provide Shetler with a screw as a means for attachment rather than a pin, in order to increase the attachment strength.

Regarding claims 4-9, Shetler discloses the device substantially as claimed but does not disclose a holding member adapted for a firearm. In particular, Shelter does not have a holding member which is U-shaped and constructed from the one of the listed materials, notched, adapted for a trigger, molded to the shape of a firearm, or closed off at the open side by one of the selected fasteners. Nichols, however, discloses a holster for a firearm with the features of claims 4-9. In particular, Nichols teaches the following: leather (col. 2 ln 26) holding member 11 formed in a U-shape; a notch aperture formed between walls 15 and 14; an open portion of the U-shape adapted to accommodate trigger (shown in Figure 1 at 11); a holding member molded to be the negative image of the firearm (col. 2 lines 30-35); and an open side of the U-shaped holding member closed of by stitches 13. Therefore it would have been obvious to one skilled in the art at the time of invention, to exchange the holding member of Shetler with the holding member of Nichols. Shetler and Nichols are viewed as analogous art, each having a similar structure, in that both are holsters with means to attach a holding member to a person's belt. The belt attachment means of Shetler could easily be switched for the belt attachment means of Nichols and vice versa.

Regarding claim 16, the modified Shetler device discloses the claimed invention including a holster to be configured with a firearm, the holster having a planar, holding, and retaining members. Furthermore, the modified Shetler device also discloses a belt

being used and held in the closed loop formed by the planar, holding, and retaining members, effectively satisfying the claims.

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shetler in view of Coyne (US 6,691,374). Shetler discloses the invention substantially as claimed and as applied to claim 1 above, but does not include a latch member extending from the holding member towards the planar member. However, Coyne discloses a belt clip with retaining member 40 and means for creating friction 46b and 46c as well as latch member 46a extending from the retaining member at 40 and toward the planar member 60. Furthermore, the latch member of Coyne also appears to extend past the retaining member 40 by a small amount. Regarding the specific size range of  $1/64^{\text{th}}$  to  $1/2$  inch, it would have been an obvious matter of design choice to make the latch member of Coyne extend to such a size, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Therefore it would have been obvious to one skilled in the art at the time of invention to provide Shetler with a latch member in order to further secure a belt in the clip.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shetler in view of Nichols and in further view of Coyne. The modified Shetler device discloses the invention substantially as claimed and as applied to claim 16 above, but does not include a latch member extending from the holding member towards the planar member. However, Coyne discloses a belt clip with retaining member 40 and means for

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creating friction 46b and 46c as well as latch member 46a extending from the retaining member at 40 and toward the planar member 60. Furthermore, the latch member of Coyne also appears to extend past the retaining member 40 by a small amount. Regarding the specific size range of  $1/64^{\text{th}}$  to  $1/2$  inch, it would have been an obvious matter of design choice to make the latch member of Coyne extend to such a size, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Therefore it would have been obvious to one skilled in the art at the time of invention to provide Shetler with a latch member in order to further secure a belt in the clip.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nichols (5,544,794) discloses a gun holster. Nichols (5,820,003) discloses a gun holster. Wisser (5,282,559) discloses a gun holster. Hellwag (5,622,295) discloses a gun holster. Nordberg (5,235,728) discloses a device for attaching to a belt. Brady (5,114,061) discloses a clip with retaining means. Bucheimer (2,917,213) discloses a gun holster. Beletsky (6,588,639) discloses a gun holster. Hill (5,167,355) discloses a gun holster.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey N. Skurdal whose telephone number is 571-272-9588. The examiner can normally be reached on M-Th 8am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cns

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER